

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

WELLINGTON SPENCER COPPESS,  
*Petitioner.*

No. 2 CA-CR 2016-0232-PR  
Filed September 12, 2016

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

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Petition for Review from the Superior Court in Pima County

No. CR20020885

The Honorable Paul E. Tang, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Wellington S. Coppess, Tucson  
*In Propria Persona*

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Wellington Coppess seeks review of the trial court’s order dismissing his untimely and successive notice for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Coppess has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Coppess was convicted of second-degree murder, aggravated assault, aggravated driving under the influence of an intoxicant, leaving the scene of an accident involving death or serious injury, and criminal damage. The trial court sentenced him to prison terms totaling 44.5 years. We affirmed his convictions and sentences on appeal. *State v. Coppess*, No. 2 CA-CR 2003-0355 (Ariz. App. Feb. 28, 2006) (mem. decision). Before this proceeding, Coppess has sought post-conviction relief on at least two occasions; in each, the trial court summarily denied relief, and this court denied relief on review. *State v. Coppess*, No. 2 CA-CR 2011-0235-PR (Ariz. App. Dec. 9, 2011) (mem. decision); *State v. Coppess*, No. 2 CA-CR 2007-0303-PR (Ariz. App. Mar. 25, 2008) (mem. decision).

¶3 In April 2016, Coppess filed a notice of post-conviction relief stating he was raising a claim of ineffective assistance of counsel, asserting Rule 32 counsel in his second post-conviction proceeding had “refused to find any colorable claims” due to “counsel’s actual irreconcilable conflict of interest,” which he asserted was structural error. The trial court summarily dismissed the notice, and this petition for review followed.

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¶4 On review, Coppess cites *Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002), and asserts, as he did below, that he is entitled to raise his claim because he did not knowingly, voluntarily, and intelligently waive the underlying claim—counsel’s purported conflict. Pursuant to *Stewart*, certain claims may be raised in a successive post-conviction proceeding without being subject to preclusion on waiver grounds pursuant to Rule 32.2(a)(3). *Stewart*, 202 Ariz. 446, ¶ 12, 46 P.3d at 1071. But *Stewart* does not apply to claims raised in an untimely proceeding like this one, and Coppess’s claim, made pursuant to Rule 32.1(a), is barred irrespective of waiver. See *State v. Lopez*, 234 Ariz. 513, ¶¶ 6-8, 323 P.3d 1164, 1166 (App. 2014); see also Ariz. R. Crim. P. 32.4(a) (only claims under Rule 32.1(d) through (h) can be raised in untimely proceeding).

¶5 In any event, as a non-pleading defendant, Coppess has “no constitutional right to counsel in post-conviction proceedings,” and his claim counsel was ineffective is thus not cognizable under Rule 32. *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4, 307 P.3d 1013, 1014 (App. 2013). The trial court did not err by summarily dismissing the notice of post-conviction relief. See Ariz. R. Crim. P. 32.2(b).

¶6 We grant review but deny relief.